

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0215P
Tax Administration—Penalty
For the Years 1999-2001

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ISSUE

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

STATEMENT OF FACTS

The penalty was proposed in the first instance because the auditor determined taxpayer had reported exempt sales for which there were no valid exemption certificates. Further, taxpayer failed to accrue and remit use tax on marketing items shipped to Indiana customers. Taxpayer was aware of its duty to report such sales. Taxpayer argues that it had no intent to deprive the Department of the revenue owed. Taxpayer also argues that since the error percentages in the audit were so small, the penalty assessment is unfair. An audit conducted in 1993 had revealed similar issues regarding failure to have valid exemption certificates and failure to accrue and remit use tax.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or

regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care. Taxpayer freely admits mistakes were made, but argues it did not act in a willfully negligent manner. Taxpayer also cites its good payment history. However, taxpayer has known since 1993 of its responsibilities regarding valid exemption certificates and accruing and remitting use tax. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.